

According to 86 Ill. Adm. Code 500.325(b), in the case of a carrier using independent contractors under long-term leases (more than 30 days), the lessor and lessee will be given the option of designating which party will report and pay fuel use tax. (This is a GIL.)

November 29, 2001

Dear Xxxxx:

This letter is in response to your letter dated October 16, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

The Illinois Motor Fuel Use Tax Carrier Compliance Manual indicates that, when a carrier uses independent contractors under leases exceeding 30 days, the parties have the option of determining which will report and pay motor fuel use tax. During discussions with various IFTA auditors, it has become evident that the particulars of this subject have different interpretations.

I spoke this morning with a representative of your Springfield office. He reiterated that responsibility for reporting and paying motor fuel use tax is determined by the lease agreement. He stated that, if the lease agreement states that the independent contractor is responsible for such, the carrier would NOT be held responsible if the independent contractor failed to fulfill its obligations. I asked if the carrier should require from the independent contractor a proof of filing, copy of the permit, or the like. I was told that is not necessary because, 'We'd go back to the independent contractor, not the carrier, if there was a problem.'

Another call was placed to your Marion office, where different information was received. We were told that the carrier would, even if the lease agreement specified differently, ultimately be held responsible for reporting and paying motor fuel use tax if the independent contractor failed to do so.

The representative in Marion suggested that we write a letter to the Springfield Legal Department requesting formal interpretation. NAME currently reports and pays the quarterly motor fuel use tax incurred for all equipment running under its operating authority, whether it be Company owned or belonging to an independent contractor. We plan to change our lease agreement, however, and want to make sure that we remain in compliance and understand the full extent of our exposure. Due to the conflicting information received today, I am seeking a more definitive answer from your office.

Thank you for your assistance in this matter.

As you know, the Motor Fuel Tax Law, 35 ILCS 505/1 et seq., imposes a tax upon the use of motor fuel upon highways of this State by commercial motor vehicles. Every commercial motor carrier must pay the tax imposed, which is calculated on the amount of motor fuel consumed on highways within the State. Section 13a.2 of the Motor Fuel Tax Law states that each motor carrier must keep records which accurately reflect the type and number of gallons of motor fuel consumed, the number of miles traveled with each type of fuel on the highways of each jurisdiction and the highways of Illinois, the type and number of gallons of tax paid fuel purchased in this State, and every jurisdiction, and the number of miles traveled and the amount of fuel consumed on the highways of this State and every jurisdiction. The law further requires that licensees shall preserve the records for a period of 4 years from the due date of their returns or the date filed, whichever is later.

Section 13a.4 states that generally no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction.

According to 86 Ill. Adm. Code 500.325(b), enclosed, in the case of a carrier using independent contractors under long-term leases (more than 30 days), the lessor and lessee will be given the option of designating which party will report and pay fuel use tax. In the absence of a written agreement or contract, or if the document is silent regarding responsibility for reporting and paying fuel use tax, the lessee will be responsible for reporting and paying fuel use tax. If the lessee (carrier), through a written agreement or contract, assumes responsibility for reporting and paying fuel use taxes, the base jurisdiction for purposes of this Part shall be the base jurisdiction of the lessee, regardless of the jurisdiction in which the commercial motor vehicle is registered for vehicle registration purposes by the lessor.

Please note that Section 500.325(e) requires that for licensees registered under the International Fuel Tax Agreement (IFTA), leases shall be made available upon request of the Department or request of any member jurisdiction.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
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MPM:msk  
Enc.